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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 625 314-674

NORTH MIAMI, A MUNICIPAL CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF FLORIDA,
Petitioner,

vs.

W. J. MEREDITH, JAMES G. MARTIN AND A. R. OHMART.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

D. H. REDFEARN,
Counsel for Petitioner.

R. H. FERRELL,
Of Counsel.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above entitled cause on June 23, 1941, affirming the judgment of the District Court of the United States for the Southern District of Florida.

Opinions Below.

The final judgment of the District Court (R. 66) is unreported. The opinion of the United States Circuit Court of Appeals is reported in 121 F. (2d) 279 (R. 137).

Jurisdiction.

The judgment of the United States Circuit Court of Appeals sought to be reviewed was entered on June 23, 1941 (R. 141). The jurisdiction of this Court is invoked under Section 240 (a) of Judicial Code as amended by the Act of February 13, 1925.

Question Presented.

Where an original attempt, in 1926, to organize under Florida statutes a municipal corporation embracing two non-contiguous tracts of land, by the registered voters residing in Tract A (assessed value $1,007,026.00) and the registered voters residing in Tract B (assessed value $1,050,137.00), in 1931, is held unauthorized and void in *quo warranto* proceedings instituted by the Attorney General of Florida, with property owners of Tract B as co-relators, based on controlling legal principles established by an 1892 decision of the Supreme Court of Florida; and where it is further held that Tract B is not liable for the payment of any part of bonds, aggregating more than $300,000.00, dated 1927, 1928 and 1929, issued by said purported municipal corporation, on the ground that, at least so far as Tract B was concerned, there was no municipal corporation *de jure* or *de facto;* is now Tract A liable for the payment of all of said bond issues on the ground that under said originaf attempt to incorporate by the registered voters residing both in Tracts A and B, Tract A is a *de jure* or *de facto* municipal corporation?

Statutes Involved.

The statutes involved are set out in the Appendix, pages 24-26.

Statement.

On August 31, 1940, W. J. Meredith, James G. Martin and A. R. Ohmart,[1] citizens of the State of Kansas, assignees of three common law judgments (R. 33, 35, 37; Plaintiffs' Exhibits #1, #2 and #3) obtained by Brown-Crummer Investment Company and H. T. East in 1931, 1936 and 1937 (R. 7, 9, 10; Plaintiff's Exhibits A, B and C) upon certain bonds and interest coupons issued January 1, 1927, April 1, 1927, March 1, 1928, and April 1, 1929 (R. 111-115, 122-133; Plaintiff's Exhibits A, B, C, D, F, H, I and J), instituted these proceedings in the District Court of the United States for the Southern District of Florida (R. 1) to compel petitioner, an alleged municipal corporation organized and existing under the laws of the State of Florida, to levy "a special tax upon the 1940 tax roll of defendant, for the payment of said judgments now held by plaintiffs, upon all taxable property which was included within the territorial boundaries of said defendant as constituted at the time of the issuance of the bonds and interest coupons upon which said judgments were based, including homesteads" (R. 6), except lands in the east side of Biscayne Bay relieved of liability for their payment by the decision of this Court in *Ocean Beach Heights Inc.* v. *Brown-Crummer Investment Company,* 302 U. S. 614 (R. 68).

As a defense petitioner, in its answer, denied that North Miami was a municipality organized and existing under and by virtue of the laws of the State of Florida (R. 12), pleading the judgment of ouster entered by the Circuit Court of Dade County, Florida, on December 18, 1931 (R. 28, Defendant's Exhibit B), in *quo warranto* proceedings against the Town of North Miami by the State of Florida, through

[1] For convenience, W. J. Meredith, James G. Martin and A. R. Ohmart will be referred to interchangeably as "respondents".

its Attorney General, joined by co-relators, wherein the information (R. 19, Defendant's Exhibit A) charged that its attempted incorporation in 1926, by the inhabitants of the territory involved,[2] under Sections 1825 to 1828 of the Revised Statutes of Florida, now paragraph 2935 Compiled General Laws 1927 (Appendix, pp. 24-25) was void; that said Town had never been organized according to law and was without legal existence; and that the Town and its officers "for the space of two years and more last past usurped and

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[2] The information in *quo warranto* did allege "there are not more than ten registered voters living on the territory hereinabove described, although in the community of Miami Shores there are approximately three hundred voters; that at the time of the attempted incorporation, the registered voters participating in the election and attempted incorporation were all residents of the community of Miami Shores, which is comprised of territory solely west of Biscayne Bay and not a part of the territory hereinabove first described" (R. 25). However, the fact that the original incorporation was participated in by registered voters of both the east side and the west side of Biscayne Bay is clearly established in the record in the case of *Ocean Beach Heights, Inc.* v. *Brown-Crummer Investment Company,* Supreme Court of the United States, October Term, 1937, No. 10 (R. 92-98, 99-102, Relators' Exhibit A), where the notice of the organization meeting is set forth stating "There will be an assembling and meeting of all citizens who are registered voters residing within the following described boundaries * * *" (including lands on the east and west side of Biscayne Bay); and in the same record and in the same Exhibit A, on page 97 thereof, one Paul Prigg (a resident of the east side) was elected one of the aldermen; and further, in the same record on page 310, the answer of the Town of North Miami "denied that at the time of incorporation of said town the registered voters participating in the election and incorporation resided in the territory west of Biscayne Bay," and petition for rehearing (p. 9, No. 10, October Term 1937), of Brown-Crummer Investment Company stated: "* * * the fact disclosed in this record that this was a good faith attempt by the tax payers and inhabitants of both sides of the bay to organize a municipality under a statute presumed sufficient to authorize the inclusion of lands and navigable waters lying between and not adjudged insufficient until after the bonds were issued". (For taking judicial notice of record see *DeBean* v. *Safe Deposit and Trust Co. etc.,* 233 U. S. 24, 32). See also allegations in case of *Heyward* v. *Hall,* 144 Fla. 90, where bill alleged: "A group of individuals residing in a hamlet located in the following territory which lies on the west side of Biscayne Bay, together with other individuals residing in the following territory located on the east side of Biscayne Bay, attempted to incorporate a municipal corporation". (For taking judicial notice see *Hanley* v. *Donahue,* 116 U. S. 1, 6.)

do usurp to be a municipal corporation" * * * "to the prejudice and wrong of the people of Florida" (R. 20-21), for that the original attempt at incorporation consisted of an effort to organize under one government two detached tracts of land, one on the east side and the other on the west side of Biscayne Bay, Dade County, Florida (R. 24). By the prayer of said information the pretended municipal corporation and its governmental officers were required "to answer to the state by what warrant or authority of law they claimed to exercise the offices, franchises, liberties and powers" of such a municipal corporation (R.27). Upon the trial of said cause the jury had rendered a verdict in favor of the State and the co-relators and against the respondents (R. 29), and by the final judgment entered thereon, the Town of North Miami and the officers thereof had been "ousted, excluded and prohibited from exercising the offices, franchises, and privileges of a municipality or municipal corporation" (R. 29), and further, the town's officers had also been ousted, excluded, and prohibited from exercising such offices, franchises, and privileges over the lands of the co-relators which were east of Biscayne Bay, (R. 29; Defendant's Exhibit A).

The plea of said judgment of ouster entered by said Circuit Court of Dade County, rendered pursuant to the opinion of the Supreme Court of Florida in the case of *Mahood* v. *State ex rel. Davis, Attorney General,* 101 Fla. 1254, which was the foundation for the opinion of the Supreme Court of Florida in *Leatherman et al.* v. *Alta Cliff Company et al.,* 114 Fla. 305, and the basis for the decision of the Supreme Court of the United States in *Ocean Beach Heights, Inc.* v. *Brown-Crummer Investment Company,* 302 U. S. 614, was made in order to show that said pretended town and its officers had been ousted, excluded, and prohibited from exercising the offices, franchises, and privileges

of a municipal corporation and had no authority to levy and collect the taxes asked in respondents' complaint.

Petitioner, further answering, pled that the lands of co-relators on the east side of Biscayne Bay excluded by the said judgment of ouster and relieved of all taxation by the pretended municipality in *Ocean Beach Heights, Inc.* v. *Brown-Crummer Investment Company, supra,* constituted three-fourths of the taxable values of the property within the original boundaries of said pretended municipality and that in reliance upon the same being available for assessment and taxation the inhabitants of the territory originally included in said pretended town, upon its said incorporation, voted bonds in the aggregate amount of $302,028.65; that should the remaining territory lying west of Biscayne Bay with only one-fourth of the taxable property, according to 1936 tax rolls, originally included in said pretended municipality, be now adjudged a municipality legally incorporated and be compelled to pay all of said bonded indebtedness, an inequitable and unjust burden would be cast upon the landowners on said west side and it would be impossible for said town to function as a municipal corporation (R. 17-18).

By way of an amendment to its answer, petitioner sought to establish that should the remaining territory lying west of Biscayne Bay be now adjudged a municipality legally incorporated and be compelled to pay all of a general improvement bond issue dated January 1, 1927, amounting to $175,000.00, such would be in excess of ten per centum of the assessed value of real and personal property on the west side of Biscayne Bay at the time said general improvement bonds were issued ($1,007,026.00) contrary to the express provisions of the statute authorizing the issuance of general improvement bonds by municipal corporations, Section 3011, Compiled General Laws, 1927, Appendix, p. 26 (R. 58-64).

On the complaint so filed (R. 1) the said answer of North Miami (R. 12), motion of the Town of North Miami for leave to amend answer and the amendment to its answer attached thereto (R. 57), request for admission (R. 31) and motion for summary judgment (R. 40), said District Court, on the 18th day of November, 1940, holding that none of the matters pleaded or proferred by the amendment constituted a defense, entered final judgment requiring the officers of said town to levy and collect taxes sufficient to pay all of said judgments (R. 66).

On appeal from the District Court's decision, the Circuit Court of Appeals affirmed the judgment of the District Court (R. 141), rejecting the petitioner's contentions that there was no *de jure* or *de facto* municipal corporation including lands lying west of Biscayne Bay, refusing to apply properly applicable local decisions, and substituting therefor its own interpretation of said decisions supported by *obiter dicta* inconsistent with applicable adjudicated principles of local law and without legal foundation whatsoever.

Specifications of Errors to be Urged.

1. The Circuit Court of Appeals erred in holding that petitioner's non existence *de jure* and *de facto* was not established by the judgment of ouster entered by the Circuit Court of Dade County, Florida, on December 18, 1931, rendered pursuant to *Mahood* v. *State ex rel. Davis, supra,* and *Town of Enterprise* v. *State,* 29 Fla. 128.

2. The Circuit Court of Appeals erred in holding that petitioner's non-~~existent~~ existence *de jure* and *de facto* was not adjudged by the Supreme Court of Florida in *Leatherman et al.* v. *Alta Cliff Company, supra,* and by the Supreme Court of the United States in *Ocean Beach Heights, Inc.* v. *Brown-Crummer Investment Company, supra.*

3. The Circuit Court of Appeals erred in holding that petitioner was liable for all bonds issued in 1927, 1928 and 1929 as a *de facto* municipal corporation contrary to well settled legal principles established by the Supreme Court of Florida in *Town of Enterprise* v. *State, supra*; *Mahood* v. *State ex rel. Davis, supra*; *Leatherman et al.* v. *Alta Cliff Company, supra;* and by the Supreme Court of the United States in *Ocean Beach Heights, Inc.* v. *Brown-Crummer Investment Company, supra.*

4. The Circuit Court of Appeals erred in holding that petitioner was liable for all bonds issued in 1927, 1928 and 1929 as a *de facto* municipal corporation on the principle of judicial and legislative recognition and the exercising of municipal functions.

5. The Circuit Court of Appeals erred in holding that petitioner was liable for a $175,000 general improvement bond issue of January 1, 1927, as a *de facto* municipal corporation, inasmuch as the amount of said bond issue is in excess of ten per centum of the assessed value of real and personal property within the boundaries of said *de facto* municipal corporation contrary to the express provisions of the Florida statute authorizing the issuance of general improvement bonds by municipal corporations.

6. The Circuit Court of Appeals erred in affirming the judgment of the District Court.

Reasons Why the Writ Should be Granted.

The Circuit Court of Appeals has decided an important question of local law in a way probably in conflict with applicable local decisions, and in conflict with a decision of this Court in a controversy between the same parties or their privies construing the same principle of law.

Wherefore, petitioner respectfully prays that a writ of certiorari issue to the Circuit Court of Appeals for the Fifth Circuit.

D. H. REDFEARN,
Counsel for Petitioner.

Of Counsel:
R. H. FERRELL,
REDFEARN & FERRELL,
1206 duPont Building,
Miami, Florida.